

# **Building and Construction Sector (Self-certification by Plumbers and Drainlayers) Amendment Bill**

Submission of the New Zealand Law Society Te Kāhui  
Ture o Aotearoa

18 December 2025

## 1. Introduction

- 1.1. The New Zealand Law Society Te Kāhui Ture o Aotearoa (the **Law Society**) welcomes the opportunity to comment on the Building and Construction Sector (Self-certification by Plumbers and Drainlayers) Amendment Bill (**the Bill**). The Bill proposes to amend the Building Act 2004 (**BA**) and the Plumbers, Gasfitters, and Drainlayers Act 2006 (**PGDA**) to introduce an opt-in scheme to allow qualified plumbers and drainlayers to self-certify that their work complies with the terms of a building consent.
- 1.2. This submission has been prepared with the input of the Law Society's Public Law Committee. It first addresses deficiencies in the policy development process, and then focuses on recommended drafting changes to improve legal clarity and the operation of the proposed self-certification mechanism.
- 1.3. The Law Society **does not wish to be heard** on this submission.

## 2. Deficiencies in the policy development process

- 2.1. The explanatory note to the Bill states that the key purpose of the proposed self-certification mechanism is to "speed up the consenting process for, and building of, houses in New Zealand by reducing the number of inspections that must be completed for plumbing and drainlaying work."
- 2.2. The Law Society makes no comment on this underlying policy intent. However, we observe that the analysis in the Bill's regulatory impact statement (**RIS**) does not convincingly show it can be achieved by the proposed self-certification mechanism.
- 2.3. The RIS indicates limited consultation in 2020 during preparation of a report on a self-certification scheme for plumbers and drainlayers, and some consultation in 2023 (on building consent reform more generally) and 2024.<sup>1</sup> The latter did not include consultation on the specific proposals in the Bill. There has been only limited consultation with the Plumbers, Gasfitters and Drainlayers Board (**the Board**), and no consultation with the public or wider industry. This appears to be due to ministerially imposed timeframes.<sup>2</sup>
- 2.4. The RIS also reports that time constraints have meant officials were unable to 'conduct a full and thorough analysis of the cost-benefit for the options', 'nor consult and test options with industry stakeholders and those impacted by the proposals.'<sup>3</sup> The RIS references a cost-benefit analysis commissioned from Sapere, noting in the summary:

*MBIE has commissioned Sapere to complete a more detailed cost-benefit analysis of both options which is due in late March [2025] and will be shared publicly when the RIS and other Cabinet materials are published.*

- 2.5. Notably, it states that there will be insufficient time to incorporate the findings of this cost-benefit analysis into the RIS, and indicates the preliminary finding that the preferred

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<sup>1</sup> RIS, 11 March, [61] to [67]

<sup>2</sup> RIS, 11 March, [68]

<sup>3</sup> RIS, 11 March, [144]

options would have a net benefit, assuming the level of defects does not increase.<sup>4</sup> At the time of preparing this submission, the Sapere cost-benefit analysis has not been made publicly available.

2.6. The analysis conducted in the RIS is constrained by ministerial direction of the policy process (and therefore the identification of options), and by limited information on important aspects such as:<sup>5</sup>

- The extent to which consent requirements in fact add to the time and cost for build of a simple residential structure.
- The likely impact of self-certification schemes on levels of building defects, and the impact on consumers.
- Availability of insurance products to support the scheme, including for any resulting building defects.
- The actual costs of establishing and operating the scheme.

2.7. Overall, the RIS describes the evidential certainty of the proposal's impacts as 'low' in all but one area.<sup>6</sup>

2.8. These constrained timeframes and limited consultation do not appear to be justified. We are not convinced there was (or is) a sufficiently pressing need to justify this deviation from best practice, or even adequate, policy development and legislative processes. Given the significant potential consequences (see below), we recommend the Select Committee consider a requirement for some form of post-legislative scrutiny.

### **Effect of reforms on risk and liability, and consumer impact**

2.9. The Bill's design is intended to address, amongst other identified consenting inefficiencies, the liability and system settings that are seen to encourage a risk-averse approach by building consent authorities, who often become the 'last man standing' under the joint and several liability settings that apply where there is defective building work. This is reflected in the regime's removal of inspection requirements, and clause 12 of the Bill, which will amend section 392 of the BA to provide that a building consent authority is not liable for anything done or omitted to be done in good faith, and in reliance on a certificate of compliance issued by an approved self-certifying plumber or drainlayer.

2.10. This reallocation of risk (and liability) requires careful policy consideration, and this is not evident in the RIS or the Bill. Although we acknowledge recent announcements that the Government has agreed to change the liability settings in the building and construction sector, supported by home warranties and professional indemnity insurance, those changes are not anticipated to take effect until 2027 (assuming they proceed).<sup>7</sup>

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<sup>4</sup> RIS, 11 March, [144]

<sup>5</sup> RIS, 11 March, summary at p. 4

<sup>6</sup> RIS, 11 March, table following para [161]

<sup>7</sup> Beehive Announcement (24 November 2025) 'Building reforms deliver consumer protections.'

- 2.11. In the absence of such reform having been implemented, a consumer's ability to pursue a remedy for defective plumbing and drainlaying work, where that work has been self-certified, will likely depend upon the solvency of the self-certifier and whether they hold insurance. We would have expected to see analysis of these potential impacts, and options to address them, during the policy development process. If that has occurred here, it is not evident. This is a matter of real rather than theoretical significance. The Department Disclosure Statement (**DDS**) to the Bill records that faulty plumbing and drainlaying can cause "significant economic damage", water damage being "one of the costliest defects that can occur in the home." These changes may result in people being left unable to recoup losses caused by negligent plumbers and drainlayers. A fulsome policy development process is necessary.
- 2.12. The Law Society recommends that the Select Committee seek further and detailed advice from officials on the likely impact of the reforms on consumers, before the Bill proceeds further.

### 3. Proposed amendments to the Building Act 2004

#### **Relevance and effect of statutory declaration (clauses 5 to 7)**

- 3.1. Clause 5 proposes to amend section 45 of the BA, which specifies the information required in an application for building consent. It proposes new subsection (1)(bd), which will require that, where the building work is to include self-certifiable plumbing or drainlaying work (and the applicant intends to rely on new section 94(2)(aa)), the following information must be provided:
- The name of each self-certifying plumber or drainlayer who will do, assist, or supervise the self-certifiable plumbing or drainlaying work; and
  - A statutory declaration from each of the named self-certifying plumbers or drainlayers, stating that the plumbing or drainlaying work is self-certifiable.
- 3.2. Clause 6 provides that the building consent authority may then only grant a building consent in relation to that work, if:
- An approved self-certifying plumber or drainlayer will do, assist in, or supervise the work (new section 49(1A)(a)); and
  - It is satisfied on reasonable grounds that the work is self-certifiable (new section 49(1A)(b)).
- 3.3. It is unclear whether new section 49(1A)(b) is intended to be satisfied by the building consent authority having received a statutory declaration in accordance with new section 45(1)(bd)(ii), or whether additional considerations are required. Our understanding of the proposal is that it is intended to be the former, but this is not clear and should be clarified. In the absence of clarity, the provision may simply transfer the present risk borne by building consent authorities (and the associated delay claimed in the RIS) to this step of the process. That is, the building consent authority will be required at this time to undertake an assessment of whether it has reasonable grounds to be satisfied that the

proposed work is self-certifiable and will need to make that decision without the assistance of statutory criteria or requirements.

- 3.4. Further uncertainty arises when clauses 5 and 6 are considered alongside clause 7.
- 3.5. Clause 7 proposes new section 89A, which will apply if – following the grant of building consent – there are changes to the self-certifying plumbers or drainlayers who will carry out the self-certifiable work. It will require the owner to provide written notice to the building consent authority, as soon as practicable, of any of the following:
  - Where the self-certifying plumber or drainlayer was not stated in the building consent application (under new section 45(1)(bd)), the name of every approved self-certifying plumber or drainlayer who will issue a certificate of compliance in relation to the plumbing or drainlaying work (new section 89A(1)).
  - If work has commenced, the name(s) of the approved self-certifying plumber or drainlayer who was included in the building consent application, and who has ceased to be engaged in relation to the work (new section 89A(2)(a)).
  - If the work has commenced, the name(s) of any other self-certifying plumber or drainlayer who has been engaged to do, assist in, or supervise the self-certifying work (new section 89A(2)(b)).
- 3.6. Subsection (3) then sets out what the above notifications must include.
- 3.7. It is sensible for the Bill to address the (not uncommon) scenario of engaged plumbers and drainlayers changing over the course of a building project. However, we note that new section 89A does not include an equivalent of new section 45(1)(bd)(ii) – the requirement for a statutory declaration stating that the plumbing or drainlaying work is self-certifiable.
- 3.8. This is not to suggest that the building consent authority should be required to revisit the grant of the building consent if a plumber or drainlayer changes during a project. Rather, the absence of a requirement for the new plumber or drainlayer to provide a statutory declaration, highlights the ambiguity around the relevance of the statutory declaration, as noted above.
- 3.9. It may be that, in such circumstances, a new statutory declaration is relevant at the certificate of compliance and code compliance certificate steps. To that end, we note that clause 9 proposes to amend section 94 of the BA, to require that a certificate of compliance issued by an approved self-certifying plumber or drainlayer must be accepted for the purposes of issuing a code compliance certificate. This is an important step in achieving the Bill's policy intent, and as it does not afford any discretion to the building consent authority, it highlights the importance of clarity and accountability in the earlier stages of the building consent process. As currently drafted, this certificate of compliance may be submitted by a person who is different from the person originally identified in the building consent application, and on whose statutory declaration the building consent authority has relied.
- 3.10. The proposed amendment to section 392 of the BA (clause 12 of the Bill) will provide that a building consent authority is not liable for anything done or omitted to be done in good

faith, and in reliance on a certificate of compliance issued by an approved self-certifying plumber or drainlayer. This further emphasises the importance of clarity and accountability within the building consent process.

- 3.11. The Law Society recommends that the Select Committee take advice from officials on whether the requirement for a statutory declaration beneficially adds to the process, and if so whether there should be an equivalence of requirements when personnel change.

### **Monitoring of the self-certification regime – Clauses 10 and 18**

- 3.12. Clause 10 proposes to introduce new section 169B into the BA. This will require the chief executive to monitor the application of Part 2AA of the PGDA and its impact on the performance of the building sector.
- 3.13. There is potentially repetition of this requirement within Part 2AA itself (introduced via clause 18 of the Bill). Under new Part 2AA of the PGDA, section 87AI(2), the chief executive must “monitor the establishment and continued operation of this Part by the Board and the impact of this Part on the performance of the Building Sector under the Building Act 2004.”
- 3.14. The drafting of these two provisions differs slightly, noting the focus of the first part of new section 87AI(2) of the PGDA, on the Board’s establishment and operation of Part 2AA. However, there is unnecessary duplication and the slight variation in drafting is undesirable. If both provisions are to remain, the wording should be clarified. However, we recommend relying on only one provision, and suggest this may best fit within the scheme of the BA. This would be consistent with new section 137(db) of the PGDA (see clause 38), which requires the Board to assist the chief executive in monitoring the impact of Part 2AA, suggesting that the primary intention is to monitor the impact of the regime, rather than its establishment by the Board.
- 3.15. The monitoring requirement should also be clarified and strengthened. As presently drafted, all that is required is that the chief executive monitors the operation of Part 2AA. There is no legislative guidance as to:
- Over what period and how frequently the monitoring must be conducted.
  - Whether it is expected that there be reporting, or some other output of the monitoring.
  - How the findings of the monitoring must be reported, and to whom.
  - Transparency arrangements for the monitoring.
- 3.16. The Law Society recommends the inclusion of a requirement to report on the monitoring, with specified regularity and a requirement to publish an output (e.g. a report) on the Ministry’s website within a specified timeframe. Consideration should also be given to requiring that the chief executive report to the responsible Minister, noting the significance of this proposed change and its reliance on limited information about the potential impacts on consumers and others.

## 4. Proposed amendments to the Plumbers, Gasfitters, and Drainlayers Act 2006

### Defined terms – clause 15

- 4.1. Clause 15 proposes changes to section 4 of the PGDA, the interpretation section. We recommend the inclusion of definitions for “self-certifiable drainlaying” and “self-certifiable plumbing”, which are proposed to be included in section 7 of the BA (via clause 4). This will ensure the meaning of the terms – used throughout new part 2AA of the PGDA – are clear.
- 4.2. Clause 18 introduces new section 87AF, subsection (3) of which uses the term “homeowner”. That term is not defined in the principal Act (nor defined in the BA, even though the term is used in section 90A), and is not presently proposed to be defined with the clause 15 amendments to the PGDA interpretation section.
- 4.3. We note that the similar term “owner” is used in section 27A of the PGDA, which requires each registered person and provisional licence holder to provide a record of work in respect of prescribed sanitary plumbing or drainlaying to the owner of the dwelling.<sup>8</sup> Consistency of terminology between sections 27A and 87AF would be desirable.

### Natural justice and renewal of endorsement – clause 17

- 4.4. Clause 17 introduces, amongst other provisions, new sections 51C and 51H. Section 51C sets out the process for the Board’s consideration of an application for self-certification endorsement, while section 51H sets out the process for the Board’s consideration of an application to renew a self-certification endorsement.
- 4.5. While new section 51C(2) includes requirements to observe the rules of natural justice, including to provide the applicant a reasonable opportunity to make submissions, the renewal process contains no such requirements.
- 4.6. The Law Society recommends that equivalent provisions are included within new section 51H. There is no clear justification for their omission, and given the likelihood that there would be a specified reason (perhaps relating to performance or regulatory compliance) for renewal to be refused, and the impact on a person who has until now been working as an approved self-certifying plumber or drainlayer, natural justice processes will be a particularly important safeguard.

### Issuing a certificate of compliance – clause 18

- 4.7. Clause 18 introduces, amongst other sections, new section 87AD. This section concerns the issuing of certificates of compliance, and conveys that:
  - a certificate of compliance *must* be issued for any work that a self-certifying plumber or drainlayer wishes to certify, but –

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<sup>8</sup> We note here that ‘owner’ is defined in the PGDA only in respect of motor vehicles.

- they *may* only do this if the work was carried out in accordance with the applicable building consent.
- 4.8. The use of these two terms is perhaps not as clear as it should be. The difference in terms requires a level of legal expertise in statutory interpretation, and may not serve the industry well.
- 4.9. Further, subsection (1) says “...*must*... for any work *they wish* to certify.” This suggests an element of discretionary decision-making as to whether they wish to certify the work. However, it appears that no decision-making is intended other than that under subsection (2), to the extent that the approved self-certifying plumber or drainlayer is satisfied the works completed were carried out in accordance with the applicable building consent.
- 4.10. The Law Society recommends the Select Committee seek advice from officials as to how these process requirements could be expressed more clearly for users of the self-certification regime. The Select Committee may also wish to consider what recourse an owner would have, if at the end of the process they decide not to proceed with self-certification (for whatever reason) or are unable to obtain the certificate of compliance from the plumber or drainlayer who completed the work. In those circumstances, the owner would be unable to obtain a Code Compliance Certificate from the building consent authority, as inspections would not have been carried out as during completion of the work.
- 4.11. We note further that the offence provisions at clause 31 of the Bill, in respect of the certificate of compliance, relate to lodging the certificate of compliance under new section 87AF. There appears not to be an offence arising in respect of new section 87AD, the more substantive provision. For example, if a plumber issues a certificate of compliance knowing that they have not carried out the work in accordance with the building consent, contrary to section 87AD(2).
- 4.12. It may be that it is considered this is covered by existing provisions in the PGDA, but we invite the Select Committee to seek advice from officials as to whether there is a satisfactory disciplinary response available for breach of section 87AD(2).

#### **Provision of certificate of compliance – clause 18**

- 4.13. New section 87AF sets out the process requirements for lodging the certificate of compliance with the Board.
- 4.14. Section 87AF(4) will provide that subsections (1) and (3) must be complied with within 10 working days after the plumbing or drainlaying work is completed. Reading subsections (1) to (3) together, it is clear the requirement in subsection (2) is linked to subsection (1). However, the drafting of subsection (4) introduces ambiguity as to whether this is the case, as on its face it excludes the supporting documents from the 10-working day timeframe.
- 4.15. Clarity is important here, given the implications of failure to comply. Clause 31 of the Bill will amend section 89 of the PGDA, to provide that failure to comply with new section 87AF is a disciplinary offence.



- 4.16. We recommend the Select Committee seek advice from officials on whether, for ease of interpretation and to avoid ambiguity, subsection (4) should refer to “Subsections (1) to (3) must...”.

#### **Chief executive to implement and monitor endorsements – clause 18**

- 4.17. Clause 18 also introduces new section 87AI, which sets out what the chief executive ‘may’ and ‘must’ implement and monitor.
- 4.18. New section 87AI(1)(a) states that the chief executive may develop, establish, and manage the register established under section 87AG, in collaboration with the Board. This is somewhat inconsistent with new section 87AG, which provides that the Board must ensure a register is established. It also does not sit well with the relative roles and responsibilities of the Board and the chief executive.
- 4.19. The Law Society suggests it would be preferable to use the drafting approach in new sections 87AI(1)(b) and (d), so that the chief executive may “support” the Board to develop, establish, and manage the register. Consequential change may then be needed to clause 6 of Schedule 2.

#### **Maximum fine for offences under the PGDA – clauses 34 and 35**

- 4.20. Clauses 34 and 35 seek to increase the maximum fine for the offences set out in sections 121 and 122 of the PGDA from \$10,000 to \$20,000. It is important to note that these sections include offences other than in respect of endorsements or renewal of endorsements, and the maximum penalty would increase for those offences, too. This is, therefore, a more significant change than it initially appears. However, there is no explanation as to whether this is intended and, if so, why. The DDS, at 3.4, appears not to contemplate this.
- 4.21. As to the basis for the proposed fines relating to endorsements and renewals of endorsements, we note the Ministry of Justice’s comment at 3.4.1 of the DDS, that the increases are significant and might not have a clear rationale. The DDS goes on to disagree, stating that:

*The rationale is that the current penalties for misrepresentation of the status and work by plumbers/drainlayers are inadequate for self-certification due to the potential harm that could be caused as a result of this misrepresentation. Incompetent plumbing and drainage can undermine the safe disposal of foul water and poor internal plumbing can increase chances of leaky pipes.*

*The harm caused in these scenarios can include illness and contamination of the main water source (foul water) and **leaky pipes can undermine the entire structure causing significant economic damage. Internal water damage is one of the costliest defects that can occur in the home.***

*(Emphasis added)*

- 4.22. This appears to conflict with the RIS, which emphasises the low risk compared to other parts of a build:

*Plumbing and drainlaying work in residential buildings is generally lower risk than other parts of a build and more self-contained. Given that a lot of plumbing work is in effect already selfcertified within existing buildings, it is a smaller step in terms of system and practitioner readiness to extend this to new building work. This means that while the cost and time savings are more marginal, we can be more certain about likely scheme uptake levels, and that the benefits will outweigh the costs.*

*(Emphasis added)*

- 4.23. We recommend the Select Committee seek advice from officials as to whether it is intended that the maximum fine increase for all captured offences, and to clarify the harm that is intended to be reflected in the increased maximum fine. If the primary harm is identified as, for example, reduced public confidence in the self-certification regime, rather than the harms set out in the DDS, it may be appropriate to adjust the proposed maximum.

#### **Other matters**

- 4.24. Clause 38 (which amends section 137) and clause 6 of Schedule 2 both refer to the Ministry of Business, Innovation and Employment. We recommend these clauses refer instead to the “Ministry”, as this term is defined in Section 4 of the PGDA.
- 4.25. Clause 45 amends section 172C of the PGDA, to include new subsection (1AAA). The Law Society recommends that this regulation making process include a consultation obligation modelled on that already provided for in section 172C.

## **5. Recommendations**

- 5.1. For convenience, we note below the recommendations made in this submission:
- (a) That the Select Committee consider a requirement for post-legislative scrutiny of the Bill.
  - (b) Further and detailed advice be obtained on the likely impact of the reforms on consumers, before the Bill proceeds further.
  - (c) New section 49(1A)(b) BA is amended to clarify what is required for a building consent authority to be satisfied on reasonable grounds that the proposed work is self-certifiable (i.e., is the statutory declaration sufficient).
  - (d) That the Select Committee take advice from officials on whether the requirement for a statutory declaration beneficially adds to the process, and if so whether there should be a requirement following personnel change, for a new statutory declaration to be provided.
  - (e) The monitoring obligation under the PGDA (new Part 2AA) is removed, and remains solely in new section 169B of the BA, with amendments to specify and strengthen the nature of the monitoring and reporting obligations.

- (f) The terms “self-certifiable drainlaying” and “self-certifiable plumbing” are defined in the PGDA, and amendments are made for consistency between sections 27A and 87AF of BA (“homeowner” vs “owner”).
- (g) Equivalent provisions to new section 51C(2) PDGA are included in new section 51H.
- (h) The Select Committee seek advice from officials as to how the process requirements in new section 87AD could be expressed more clearly.
- (i) That the Select Committee seek advice from officials as to whether there is a satisfactory disciplinary response available for breach of section 87AD(2).
- (j) That the Select Committee seek advice on clarifying new section 87AF PGDA, in particular to amend subsection (4) to refer to “Subsections (1) to (3) must...”.
- (k) Amend new section 87AI(a) PGDA so that the chief executive may “support” the Board to develop, establish, and manage the register.
- (l) In respect of the PGDA, that the Select Committee seek advice from officials as to whether it is intended that the maximum fine increase for all captured offences, and to clarify the harm that is intended to be reflected in the increased maximum fine.
- (m) Clause 38 and clause 6 of Schedule 2 be amended to refer to “Ministry” rather than the Ministry of Business, Innovation and Employment.
- (n) Clause 45 be amended to include a consultation obligation modelled on that currently provided for in section 172C of the PGDA.



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